

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

VIRGIL NEWBY, *Individually and as Special Administrator of the ESTATE OF ALICIA NEWBY,* Plaintiff,
v. Defendants.))
TACO BELL OF AMERICA, INC. and YUM! BRANDS, INC., Defendants.))
Defendants.)) CAUSE NO. 1:11-CV-411

OPINION AND ORDER

This case was filed in this Court on December 7, 2011, based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). (Docket # 1.) Plaintiff filed his Second Amended Complaint on December 28, 2011. (Docket # 11.) The Second Amended Complaint alleges that “Plaintiff, Virgil Newby, is a natural born citizen of the United States, and the surviving lawful husband of Alicia Newby, now deceased, and presently resides in Peru, Indiana.” (Second Am. Compl. ¶ 1.)

The Second Amended Complaint, however, is still inadequate as regards the citizenship of the Plaintiff, Virgil Newby. Rather than alleging the residency of Virgil Newby, the complaint must allege his *citizenship*. *See Guar. Nat'l Title Co. v. J.E.G. Assocs.*, 101 F.3d 57, 58-59 (7th Cir. 1996) (explaining that statements concerning a party’s “residency” are not proper allegations of citizenship as required by 28 U.S.C. § 1332); *see* 28 U.S.C. § 1332. Furthermore, instead of alleging the national citizenship of Virgil Newby, the Court must be advised of Virgil’s *state citizenship*. *See* 28 U.S.C. § 1332 (giving district courts original jurisdiction in controversies between citizens of different States). “For natural persons, state citizenship is

determined by one's domicile." *Dausch v. Rykse*, 9 F.3d 1244, 1245 (7th Cir. 1993); *see also Am.'s Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992) ("In federal law citizenship means domicile, not residence.").

Therefore, Plaintiff is ORDERED to file a Third Amended Complaint on or before January 5, 2012, properly alleging the *state citizenship* of Plaintiff Virgil Newby.

SO ORDERED.

Enter for this 29th day of December, 2011.

/S/ Roger B. Cosby

Roger B. Cosby,
United States Magistrate Judge